IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11079 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GHANSHYAMBHAI MAGANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11079 of 2001

MR YN RAVANI for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 16th August, 2001 passed by the

Commissioner of Police, Surat in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. While passing the order, the dettaining authority took into consideration one offence registered against the detenu under the Bombay Prohibition Act with Kapadra Police Station. The authority also took into consideration statements of two anonymous witnesses indicating activity of the detenu. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities which are detrimental to public health and public order and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. The petitioner challenges the order of detention on various grounds stated in the petition. Learned Advocate Mr. Ravani submitted that only one offence is registered against the detenu. The compilation of the papers served on the detenu at the time of detention, if perused, indicates that some of the papers particularly the bail application preferred by the detenu before JMFC, Surat is not legible. This has affected the right of the detenu of making an effective representation enshrined under Article 22 of the Constitution of India.

3.1 He further submitted that so far as statements are concerned, the authority has exercised powers under Sec. 9(2) of the PASA Act, in absence of any cogent material. No exercise is undertaken to verify whether the fear expressed by the witnesses is genuine or imaginery. This improper exercise of powers of claiming privilege under Sec. 9(2) of the PASA Act has also affected the right of the detenu of making an effective representation. He therefore urged that the petition may be allowed.

4. Learned Assistant Government Pleader Mr. S.S. Patel has opposed to this petition.

5. Having regard to the rival side contentions, a glance at the copy of the bail application supplied to the detenu indicates that some portion of the application, particularly the endorsement made by the learned Assistant Public Prosecutor is not legible. The

contention that illegible documents has supplied, which has affected the right of the detenu of making an effective representation therefore has to be accepted.

5.1 So far as the statements are concerned, the authority has verified the statements on 8.8.2001. It is clear from the endorsement made by the authority and there is no other material to indicate that any exercise is undertaken by the detaining authority for recording the satisfaction that the fear expressed by the witnesses qua the detenu is genuine and that their names are required to be with-held in exercise of powers under Sec. 9(2) of PASA Act, as against the right of the detenu envisaged under Art. 22(5) of the Constitution of India. What is expected to be done by the authority has been clearly indicated in the cases of Bai Amina w/o Ibrahim Abdul Rahim Alla Vs. State of Gujarat, reported in 1981 GLR 1186, Chandrakant N. Patel Vs. State, reported in 1994 (1) GLR 761 (F.B) and Kajalben Sindhi & ors. Vs. Commissioner of Police, reported in 2000(2) GLR 1296. That exercise not having been undertaken by the authority concerned, the exercise of powers under Section 9(2) of the PASA Act has to be held to be improper. The right of the detenu of making an effective representation is therefore infringed. This would vitiate the detention.

6. For the foregoing reasons, the petition deserves to be allowed and the same is allowed. Order of detention dated 16th August, 2001 passed by the Commissioner of Police, Surat City against the detenu is quashed and set aside. Detenu - Ghanshyambhai Maganbhai Patel be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

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